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| 10/656,397 | 09/05/2003 | Harry Herzog | 440070.401 | 8532 |
| 500 | 7590 | 09/22/2005 | EXAMINER | |
| SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 6300 SEATTLE, WA 98104-7092 | | | LARSON, JUSTIN MATTHEW | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/656,397

Applicant(s)

HERZOG, HARRY

Examiner

Justin M. Larson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 14-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/5/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to I, classified in class 224, subclass 221.
- II. Claims 14-23, drawn to II, classified in class 56, subclass 10.1.
- III. Claims 24-25, drawn to III, classified in class 224, subclass 219.

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination broadly claims the strap without the specific details that are claimed in the subcombination of the strap alone. The subcombination has separate utility such as attaching a water bottle to a user's forearm for easy access during a workout.

2. Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as one where the user simply holds on to the strap in their hand rather than affixing it to their forearm, or one where the user affixes the strap to a body other than their forearm, such as a leg.

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3. Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as one where the user simply holds on to the strap in their hand rather than affixing it to their forearm, or one where the user affixes the strap to a body other than their forearm, such as a leg.

4. During a telephone conversation with Mr. Harold Bennett on 9/8/05, a provisional election was made without traverse to prosecute the invention of I, claims 1-13.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 14-25 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

5. The information disclosure statement (IDS) submitted on 9/5/03 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, Examiner is considering the information disclosure statement.

Specification

6. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in

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upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The disclosure is objected to because of the following informalities:

Sections/headings are underlined and/or in bold. Please note, "Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading."

Appropriate correction is required.

35 USC § 112, 6th Paragraph

7. Claims 1 and 2 are written in "means plus function" form and since they meet the analysis set forth in MPEP 2181, the Examiner assumes that applicant wishes to invoke 35 USC § 112, paragraph 6.

Claims 4, 5, and 6 attempt to use a "means" clause to recite a claim element as a means for performing a specified function, however, since this language does not meet the analysis set forth in MPEP 2181, i.e too much structure is set forth, the Examiner assumes that applicant does not wish to invoke 35 USC § 112, paragraph 6.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 recites the limitation "the elastomeric gripping surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 3, 4, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Brame (4,856,149). Brame discloses a fastener comprising: a first loop (12) made of an

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elastic material (col. 6 lines 7-10), thus having elastomeric threads woven therein that are capable of gripping a smooth cylindrical surface, and having a hook-and-loop fastener (30&32) for size adjustment; a second loop (14) having a hook-and-loop fastener (30&32) for size adjustment; and an ultrasonic weld that is equivalent to a buckle or hook-and-loop fastener in coupling the first loop to the second loop.

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Brame which is capable of being used in the intended manner, i.e., with a power landscaping tool. There is no structure in Brame that would prohibit such functional intended use (see MPEP 2111).

Regarding the limitation set forth in claim 3, the loops are also disclosed as being nylon (col. 4 lines 33-36). Examiner considers nylon to be a strong, narrow, closely woven fabric - the definition of webbing. Loops (12&14) are therefore considered to be webbing straps, satisfying this limitation.

12. Claims 1, 3-8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Corder, Jr. (4,960,280). Corder, Jr. discloses a support worn on a user's chest and limbs comprising: a buckle (D-ring); a first strap (A) having first and second ends (1&2), the first end (1) configured to pass through a first side of the buckle (the straight portion of the D-ring) and couple with VELCRO to the second end (2) to form an adjustable first loop; and a second strap (4) having a first end attached to the first strap at a point (7) in a middle region of the first strap, and a second end configured to pass through a second side of the buckle (the curved portion of the D-ring) and couple with VELCRO to itself to

form a second loop (figure 3); and a series of stitches coupling a first end of the second loop to the first loop (col. 3 lines 37-40).

The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Corder, Jr. which is capable of being used in the intended manner, i.e., with a power landscaping tool. There is no structure in Corder, Jr. that would prohibit such functional intended use (see MPEP 2111).

Regarding the limitation set forth in claim 3, the straps are fabric, a woven material, and thus considered by Examiner to be webbing.

Regarding the limitation set forth in claims 4 and 8, Corder, Jr., discloses that the straps are ideally elastic (col. 3 line 3), and they therefore must have elastomeric threads interwoven therein.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brame in view of Olsen (4,422,455). Brame discloses the claimed invention except for the second loop further including a means for damping vibrations emanating from the tool. Olsen, however, teaches a looped member for wearing on a user's limb, the loop including a layer of polyurethane open pore foam padding to protect the user's arm (col. 4 lines 64-

68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include a layer of open pore, or sponge-like, foam padding in the loop to be placed on the user's arm, as taught by Olsen, to protect the user's arm and to make the loop more comfortable. Such padding would also dampen vibrations emanating from a tool placed in the other loop.

15. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brame in view of Murphey et al. Brame discloses the claimed invention except for the coupling means comprising a series of stitches coupling a first end of the second loop to the first loop. Murphey et al., however, teaches two loops (figure 3) fastened together where a series of stitches (31) couple a first end (47) of the second loop to the first loop (18). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the loops of Brame could be attached with a series of stitches, as taught by Murphey et al., in order to securely fasten the loops without the need for an ultrasonic welding machine which may not be as readily available as the needle and thread needed for stitching.

16. Claims 2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Olsen. Corder, Jr. discloses the claimed invention except for the second strap comprising a resilient member affixed to an inner surface thereof, configured to dampen vibrations transmitted by the support. Olsen, however, teaches a looped member for wearing on a user's limb, the loop including a layer of polyurethane open pore foam padding to protect the user's arm (col. 4 lines 64-68). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to include a layer of open pore, or sponge-like, foam padding in the loop to be placed on the user's arm, as taught by Olsen, to protect the user's arm and to make the loop more comfortable. Such padding would also dampen vibrations transmitted by any part of the support.

17. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Colin (5,110,023) and Murphy et al. (US2004/0084489). Corder, Jr. discloses the claimed invention except for the buckle including first and second apertures, with the first strap passing through the first aperture, and the second aperture captured within a bight in the second end of the second strap to form the second loop. Colin and Murphey et al., however, teach that it is old and well known in the art to use a buckle with two apertures when passing straps there through to form one or more loops. Murphey et al. discloses a buckle (29) with two apertures for passing the ends of strap (18) through to form a single loop (figure 2), with the strap passing through a first aperture (19, figure 2) and the second aperture captured within a bight in the second end of the strap (23, figure 2). Colin discloses a buckle (4) with two apertures for passing the ends of strap (2) through to form two distinct loops (12&16), with the strap passing through the first aperture (24), and the second aperture captured within a bight in the second end of the strap (10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the D-rings of Corder, Jr. with well known, art equivalent buckles, as taught by Colin and Murphey et al., passing one strap end through the first buckle aperture, and capturing

the second aperture within a bight of the second end of a strap in order to form two distinct loops.

18. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Corder, Jr. in view of Depot (5,857,602) and Rivera (6,234,372). Corder, Jr. discloses the claimed invention except for an elastomeric gripping surface affixed to a side of the first strap such that when the strap is formed into the first loop, the elastomeric gripping surface is on an inner surface thereof. Depot and Rivera, however, teach that it is old and well known in the art to include an extra layer of rubber, an elastomeric material, on the interior surface of a support member holding an object to both protect the object from damage by the support member and to prevent the object from slipping out of the support member. Depot discloses a carrier with brackets (3&4) that surround an object placed therein, the brackets having rubber pads (10&11) on their interior surfaces to protect the finish on the object being carried. Rivera also discloses a carrier with brackets (38&40) that surround an object placed therein, the brackets having ribbed rubber layer (42) on their interior surfaces to better grip the object being carried. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include an extra rubber layer in a loop of Corder, Jr., as taught by Depot and Rivera, in order to protect the finish of the tool being carried and to better grip the tool in the support.


Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NATHAN J. NEWHOUSE
PRIMARY EXAMINER